

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF CHULA VISTA
CONSOLIDATING THE EASTERN TRANSPORTATION
DEVELOPMENT IMPACT FEE, WESTERN
TRANSPORTATION DEVELOPMENT IMPACT FEE, AND
BAYFRONT DEVELOPMENT IMPACT FEE CHAPTERS OF
THE CHULA VISTA MUNICIPAL CODE BY REPEALING
AND REPLACING CHAPTER 3.54 (TRANSPORTATION
DEVELOPMENT IMPACT FEE) AND REPEALING CHAPTER
3.55 (WESTERN AND BAYFRONT TRANSPORTATION
DEVELOPMENT IMPACT FEES)

WHEREAS, the City of Chula Vista currently assesses three geographically based Transportation Development Impact Fee (TDIF) programs, the Eastern TDIF (ETDIF), the Western TDIF (WTDIF), and the Bayfront TDIF (BFDIF); and

WHEREAS, the boundaries of the three geographically based TDIF programs are presented in Exhibit 1, attached hereto and incorporated by reference; and

WHEREAS, in January 1988, the ETDIF was established as a development impact fee to fund transportation facilities in the City's Eastern Territories via adoption of Ordinance No. 2251; and

WHEREAS, pursuant to Ordinance No. 2251 the City has commenced the collection of development impact fees to be used to construct transportation facilities to accommodate increased traffic generated by new development within the City's Eastern Territories; and

WHEREAS, Ordinance No. 2251 as amended by Ordinance Nos. 2289, 2348, 2349, 2431, 2580, 2604, and 2671 were repealed by Ordinance No. 2802 in January 1999; and

WHEREAS, by Ordinance No. 2802, the ETDIF was placed in Municipal Code Chapter 3.54; and

WHEREAS, by Ordinance Nos. 3029 and 3328, the ETDIF program was updated to include new costs and facilities; and

WHEREAS, on March 18, 2008, the WTDIF was established as a development impact fee to fund transportation facilities in the City's Western Territories via adoption of Ordinance Nos. 3106 through 3110, as codified in Chapter 3.55 of the Municipal Code; and

WHEREAS, in addition to preparing the City for future growth in the western portion of the City, the San Diego Association of Governments (SANDAG) required San Diego County cities to enact a Citywide TDIF program in order to continue receiving annual TransNet funds for local streets; and

WHEREAS, starting on July 1, 2008, each agency in the San Diego region was required to contribute \$2,000 in exactions (updated annually) from the private sector per Equivalent Dwelling Unit (EDU) to improve the Regional Arterial System (RAS); and

WHEREAS, on January 31, 2015, the WTDIF was amended to remove the Bayfront Area from the fee program and the BFDIF was established as a separate fee program to fund transportation facilities in the City's Bayfront Area via adoption of Ordinance No. 3328; and

WHEREAS, in order to ensure consistency between the ETDIF, WTDIF, and BFDIF programs and to simplify ordinance administration, the consolidation of all three fee programs into a single chapter of the Chula Vista Municipal Code (CVMC) is recommended (Chapter 3.54); and

WHEREAS, the proposed consolidated Transportation Development Impact Fee Chapter 3.54 includes additional language to clarify application of the existing code, to streamline administration, and to improve readability; and

WHEREAS, updates to simplify the fee modification, waiver, and deferral process, including granting additional authority to the City Council to approve fee deferrals for projects which provide significant public benefit are also recommended; and

WHEREAS, the City recognizes the positive economic benefits of hotel/motel land uses and that such uses may not achieve stabilized operations until several years after construction is complete; and

WHEREAS, the City Council therefore desires to allow for deferral of ETDIF, WTDIF, and BFDIF fees for up to four years from Certificate of Occupancy for hotel/motel uses that do not receive any other economic subsidy from the City, with the ultimate fee determination to be based upon a traffic study of actual trip generation; and

WHEREAS, this action does not increase or decrease the ETDIF, WTDIF, or BFDIF rates currently in effect; and

WHEREAS, the following findings are intended to establish a nexus between the impact of future development and the use of the fees collected; and

WHEREAS, the City's General Plan indicates the increased population will contribute to increased traffic volumes; and

WHEREAS, engineering studies show the transportation network will be adversely impacted by new development within the City's Eastern Territories, Western Area, and Bayfront Area; and

WHEREAS, engineering studies and the City's General Plan establish that the transportation facilities necessitated by development in the City's Eastern Territories, Western Area, and Bayfront Area comprise integrated networks; and

WHEREAS, on September 25, 2018, the City Council of the City of Chula Vista did conduct a duly-noticed public hearing for consideration of a revision to the TDIF program; and

WHEREAS, the City's Development Services Director has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA.

NOW THEREFORE, the City Council of the City of Chula Vista does hereby ordain as follows:

Section I. Substantive Action

Chapter 3.54 of the Chula Vista Municipal Code is hereby repealed and replaced in its entirety. Chapter 3.55 of the Chula Vista Municipal Code is hereby repealed. New Chula Vista Municipal Code Chapter 3.54 shall read as follows:

Chapter 3.54

TRANSPORTATION DEVELOPMENT IMPACT FEES

Sections:

- 3.54.010** **General intent.**
- 3.54.020** **Definitions.**
- 3.54.030** **Transportation facilities to be financed by the fees.**
- 3.54.040** **Areas to which fees are applicable.**
- 3.54.050** **Establishment of fees.**
- 3.54.060** **Determination of fees by land use category.**
- 3.54.070** **Time to determine fee amount due.**
- 3.54.080** **Purpose and use of fees.**
- 3.54.090** **Amount of fees.**
- 3.54.100** **Development projects exempt from fees.**
- 3.54.110** **Authority for accounting and expenditures.**
- 3.54.120** **Findings.**
- 3.54.130** **Fees additional to other fees and charges.**
- 3.54.140** **Developer construction of transportation facilities.**
- 3.54.145** **Mandatory oversizing of facility – Duty to tender reimbursement offer.**
- 3.54.150** **Procedure for issuance of credits or tender of reimbursement offer.**
- 3.54.155** **Developer transfer of credits.**
- 3.54.160** **Procedure for fee modification or reduction.**
- 3.54.170** **Assessment and special tax districts.**
- 3.54.180** **Economic incentive credit.**
- 3.54.190** **Fund loans.**
- 3.54.200** **Effective date.**

3.54.010 General intent.

The City's General Plan Land Use and Transportation element requires that adequate Transportation Facilities be available to accommodate increased population created by new development within the City of Chula Vista.

The City Council of the City of Chula Vista has determined that new development will create adverse impacts on the City's existing public facilities, which must be mitigated by the financing and construction of certain Transportation Facilities that are the subject of this chapter. New development contributes to the cumulative burden on Transportation Facilities in direct relationship to the demand for service generated by the development.

The City Council of the City of Chula Vista has determined that a reasonable means of financing the impacted Transportation Facilities is to charge a Fee on all developments located within the following subareas of the City of Chula Vista: the Eastern Area, the Western Area, and the Bayfront Area. Imposition of the transportation development impact fees on all new development for which building permits have not yet been issued is necessary in order to protect the public safety and welfare, thereby ensuring effective implementation of the City's General Plan.

3.54.020 Definitions.

For the purposes of this chapter, the following words or phrases shall be construed as defined in this section, unless from the context it appears that a different meaning is intended:

- A. "Accessory Dwelling Unit" means a dwelling unit as defined in CVMC 19.58.022.
- B. "Bayfront Area" generally means that area of the City of Chula Vista generally west of Interstate 5 and between E Street and Naples Street as shown on the map entitled "Attachment 1" of the Council agenda statement for the ordinance codified in this chapter, on file in the office of the City Clerk.
- C. "BFDIF" means the Bayfront Transportation Development Impact Fee.
- D. "Building Permit" means a permit required by and issued pursuant to the Uniform Building Code, as adopted by reference by this City.
- E. "Developer" means the owner or developer of a Development Project.
- F. "Development Permit" means any discretionary permit, entitlement or approval for a Development Project issued under any zoning or subdivision ordinance of the City.
- G. "Development Project" or "Development" means any activity described as the following:
 - 1. Any new residential dwelling unit, including any accessory dwelling unit, developed on vacant land;

2. Any new residential dwelling unit, including any accessory dwelling unit, developed on nonvacant land, if the result is a net increase in demand for service. The fees shall be based solely on the net increase in service demand;
 3. Any physical conversion of an existing residential structure to create an accessory dwelling unit, for which a Building Permit has been issued after September 25, 2018;
 4. Any new non-residential Development constructed on vacant land;
 5. Any expansion or intensification of non-residential Developments on nonvacant land, if the result is a net increase in demand for service. The fees shall be based solely on the net increase in service demand.
- H. “Eastern Area” generally means that area of the City of Chula Vista located between Interstate 805 on the west, the city sphere of influence boundary on the east and northeast, the city boundary on the north and the city’s southern boundary on the south as shown on the map entitled “Attachment 1” of the Council agenda statement for the ordinance codified in this chapter, on file in the office of the City Clerk.
- I. “Engineer’s Reports” mean the “Interim Eastern Area Development Impact Fee for Streets” study prepared by George T. Simpson and Willdan Associates dated November 1987; the “Eastern Area Development Fee for Streets” study prepared by Willdan Associates dated November 19, 1990; the “Eastern Development Impact Fee for Streets – 1993 Revision” study prepared by City staff dated July 13, 1993; the study prepared by Project Design Consultants (“Eastern Area Development Impact Fees for Streets, 1999 Update”) dated October 25, 1999; the study prepared by Willdan (“Eastern Area Development Impact Fees for Streets” dated July 2002); the study prepared by City staff (“Eastern Area Transportation Development Impact Fees” dated March 2005); and the study prepared by City staff (“Eastern Area Development Impact Fees” dated September 2014), which are on file in the office of the City Clerk. “Engineer’s Report’s” also mean the Engineer’s Report for the Western Transportation Development Impact Fee prepared by City staff, dated February 2008; and the “Western Transportation Development Impact Fee Nexus Study Update” dated October 2014, and the “Bayfront Transportation Development Impact Fee Nexus Study” dated October 2014, both prepared by City staff on file in the office of the City Clerk.
- J. “ETDIF” means the Eastern Transportation Development Impact Fee.
- K. “Fees” means the Transportation Development Impact Fees established pursuant to CVMC 3.54.050 and assessed in accordance with the Mitigation Fee Act (Government Code §§66000-66025), as described in relevant Engineer’s Reports on all Development Projects located within the Eastern Area, the Western Area, and the Bayfront Area.
- L. “Fee Credit” means credits that Developers may receive for costs they incur designing and constructing the Transportation Facilities in accordance with CVMC 3.54.150.
- M. “Nonprofit Community Purpose Facility” means a facility that is not operated for profit and that serves one of the following purposes:

1. Social and human service activities, including such services as Boy Scouts and Girl Scouts, Boys and Girls Club, Alcoholics Anonymous and services for the homeless;
 2. Public schools (primary and secondary only);
 3. Private schools (primary and secondary only);
 4. Day care;
 5. Senior care and recreation;
 6. Worship, spiritual growth, and development.
- N. “Published traffic generation rates” means rates used to calculate traffic generation that are prepared and disseminated by local agencies, regional entities (such as Metropolitan Planning Organizations), and professional societies with expertise in the development of traffic generation rates.
- O. “TDIF” means Transportation Development Impact Fee.
- P. “Transportation Facility” means the project or portion of a project which involves the specified improvements authorized by CVMC 3.54.030.
- Q. “Western Area” generally means that area of the City of Chula Vista located between Interstate 5 on the west, Interstate 805 on the east, the city boundary on the north and the City boundary on the south, also including the area to the north of E Street, south of Naples Street and to the west of Interstate 5, as shown on the map entitled “Attachment 1” of the Council agenda statement for the ordinance codified in this chapter, on file in the office of the City Clerk.
- R. “WTDIF” means Western Transportation Development Impact Fee.

3.54.030 Transportation facilities to be financed by the fees.

- A. The Transportation Facilities which are the subject matter of the ETDIF, WTDIF, and BFDIF, include (but are not limited to) Freeways, Expressways, Prime Arterials, Major Streets, Collectors, Town Center Arterials, Gateway Streets, Urban Arterials, Commercial Boulevards, Downtown Promenades, traffic signals, bicycle and pedestrian facilities, and capacity-enhancing transportation management technologies and associated capital expenditures, as detailed in the Engineer’s Reports on file in the office of the City Clerk. The Transportation Facilities also include related one-time start-up costs or portions thereof.
- B. The City Council of the City of Chula Vista may modify or amend the lists of Transportation Facilities by resolution in order to maintain compliance with the City’s General Plan or the capital improvement program.
- C. The Transportation Facilities are those listed in the Engineer’s Reports, included by reference.

3.54.040 Areas to which fees are applicable.

The areas of the City of Chula Vista to which the fees herein established shall be applicable shall be the Eastern Area, the Western Area, and the Bayfront Area, as they may from time to time be amended by ordinance of the City Council.

3.54.050 Establishment of fees.

- A. Development impact fees in the amounts set forth in CVMC 3.54.090 are hereby established to pay for the Transportation Facilities within the Eastern Area, the Western Area, and the Bayfront Area. The Fees shall be paid no earlier than upon the issuance of Building Permits and no later than Final Inspection or Certificate of Occupancy for each Development Project within the City of Chula Vista.
- B. Notwithstanding CVMC 3.54.050(A) above, the City Manager, in his/her sole discretion, may require payment of the Fees in advance of Final Inspection or Certificate of Occupancy upon the occurrence of any of the following events:
1. The change of ownership of the Development, or any portion or portions thereof;
 2. Upon the Finance Director's determination that the Fees are necessary based on the adopted facilities program in accordance with California Government Code Section 66007(b)(1);
 3. Upon a determination by the Finance Director that there exists a risk associated with the collection of the Fees at a date later than permit issuance.

In no instance shall the Fees be paid earlier than Building Permit issuance.

3.54.060 Determination of fees by land use category.

The Fees shall be determined based on the average daily traffic generation of the Development Project. The City Manager or designee shall calculate the traffic generation of the Development Project using published traffic generation rates, traffic generation studies, traffic count data, traffic impact studies, other relevant data and analysis, and/or engineering judgment.

For purposes of the Fees, single-family dwelling units shall include single-family detached homes and detached condominiums; multi-family dwelling units shall include attached condominiums, townhouses, duplexes, triplexes, accessory dwelling units, and apartments. The traffic generation for residential land uses shall be calculated based on the number of dwelling units proposed in the Development Project.

The traffic generation for non-residential land uses shall be calculated using various measures of development intensity as described in published traffic generation rates. For these uses, rates based on the square footage of the Development Project will in most cases be selected over rates based on gross acreage, as determined by the City Manager or designee. As it applies to non-residential land uses, gross acreage means all land area that the City Manager's designee deems necessary within the boundary of the parcel or parcels of the Development Project for which building permits are being requested.

In the ETDIF, the traffic generation rates for commercial retail land uses shall be reduced by 72% to recognize the capture of locally-generated residential traffic as documented in “Eastern Area Transportation Development Impact Fees” Engineer’s Report, dated March 2005.

3.54.070 Time to determine amount due.

The Fees for each Development shall be calculated based on the rates in effect at the time of payment.

3.54.080 Purpose and use of fees.

The Fees collected shall be used by the City for the following purposes, in such order and at such time as determined by the City Council:

- A. To pay for such of the Transportation Facilities that the City Council determines should be constructed, installed or purchased at that time, or to reimburse the City for Transportation Facilities funded by the City from other sources.
- B. To reimburse Developers who have been required or permitted by CVMC 3.54.140 to construct, install or purchase approved Transportation Facilities identified in the Engineer’s Reports, in such amounts as the City Council deems appropriate.
- C. To pay for costs associated with administration of the Fees.

3.54.090 Amount of the fees.

- A. The Fees shall be the amounts set forth in subsection (B) of this section.

The ETDIF shall be adjusted, starting on October 1, 2018, and on each October 1st thereafter, based on the one-year change (July to July) in the Engineering News Record, Construction Cost Index for the Los Angeles Region. Adjustments of the Fees based upon annual changes to the applicable index shall be automatic and shall not require further action by the City Council.

The BFDIF and WTDIF shall be adjusted on October 1, 2018, and on each October 1st thereafter. The annual inflation adjustment will be based on the one-year change (from July to July) in the Caltrans Highway Construction Cost Index or the Los Angeles Construction Cost Index as published by the Engineering News Record (ENR), or an increase of at least two percent. The program collects two percent of the total hard project cost estimate for program administration. Adjustments to BFDIF and WTDIF authorized in this section shall also be automatic in accordance with annual action taken by the San Diego Association of Governments (SANDAG) Board of Directors and shall not require further action by the City Council.

The Fees may also be reviewed and amended by the City Council as necessary based on changes in the type, size, location or cost of the Transportation Facilities to be financed by the Fees; changes in land use designation in the City’s General Plan; and upon other sound engineering, financing, and planning information.

B. The Fees as of October 1, 2017 are as follows:

BFDIF: \$1,029.70 per average daily trip
ETDIF: \$1,412.60 per average daily trip
WTDIF: \$426.00 per average daily trip

C. Developer shall pay an Administrative Fee in cash concurrent with the Fees pursuant to CVMC 3.54.090(B) to fund staff activities related to administering the Fee.

3.54.100 Development projects exempt from the fees.

A. Development Projects by public agencies shall be exempt from the provisions of the Fees if those projects are designed to provide the public service for which the agency is charged (“Public Purpose”).

B. Nonprofit Community Purpose Facilities are also exempt inasmuch as these institutions provide benefit to the community as a whole, including all land use categories which are the subject matter of the Fees. The City Council hereby determines that it is appropriate to spread any impact such Nonprofit Community Purpose Facilities might have to the other land use categories subject to the Fees. In the event that a court determines that the exemption herein extended to Nonprofit Community Purpose Facilities shall for any reason be invalid, the City Council hereby allocates the Nonprofit Community Purpose Facilities’ Fair Share to the City of Chula Vista and not to any of the land use categories which are the subject matter of the development impact land use categories.

C. Development Projects that are additions or expansions to existing dwelling units or additions, expansions, or changes of use to businesses shall be exempt if the addition, expansion or change of use does not result in a net increase in dwelling units or non-residential intensity. The Fees shall be assessed on any net additional dwelling units or non-residential intensity. Any net reduction in dwelling units or non-residential intensity shall not be entitled to a refund, but the property retains credit based on the former number of dwelling units or non-residential intensity.

3.54.110 Authority for accounting and expenditures.

All funds collected shall be deposited into specific funds based on the Area within which the Development occurs. Fees collected for the ETDIF shall be deposited into an Eastern Transportation Development Impact Fee Fund, Fees collected for the WTDIF shall be deposited into a Western Transportation Development Impact Fee Fund, and Fees collected for the BFDIF shall be deposited into a Bayfront Transportation Development Impact Fee Fund (collectively, the “Transportation Development Impact Fee Funds”) as established by the Director of Finance and shall only be expended for the purposes identified herein.

3.54.120 Findings.

The City Council finds that collection of the Fees established by this chapter is necessary to provide funds for the Transportation Facilities and to ensure certainty in the capital facilities budgeting for growth-impacted public transportation facilities.

3.54.130 Fees additional to other fees and charges.

The Fees are in addition to the requirements imposed by other City laws, policies or regulations relating to the construction or the financing of the construction of public improvements within subdivisions or Development Projects.

3.54.140 Developer construction of transportation facilities.

Developer may construct or finance a Transportation Facility in accordance with the following:

- A. Any Developer of a Development Project required by application of City ordinance, regulation, or policy, as a condition of approval of a Development Permit to construct or finance a Transportation Facility, or any Developer that proposes to design and construct a Transportation Facility in conjunction with the execution of a Development Project shall follow the procedure for doing same as set forth in this chapter and CVMC 2.56.160(H).
- B. Unless otherwise stated herein, all Fee Credits shall be calculated on a dollar basis to be applied toward payment of the assessed Fee at the time Fees are due, based on the then-current Fee rate.
- C. Fee Credits earned by constructing or financing Transportation Facilities financed by the Fee may only be tendered for payment of the Fee for a Development within the area to which the Fee is applicable. Fee Credits are not fungible as payment toward a different development impact fee in the City than the Fee in which Fee Credit was earned.
- D. The requirements of CVMC 3.54.145, 3.54.150, and 3.54.155 may, in the City's discretion, be modified through an agreement between the Developer and the City, as approved by Resolution of the City Council.

3.54.145 Mandatory oversizing of facility – Duty to tender reimbursement offer.

Whenever a Developer of a Development Project is required as a condition of approval of a Development Permit to cause a Transportation Facility to be built to accommodate the demands created by the Development Project, the City may require the Developer to install, purchase, or construct the Transportation Facility according to design specifications approved by the City, that being with such supplemental size or capacity required by the City ("Oversized Capacity Requirement"). If such an Oversized Capacity Requirement is imposed, the City shall tender to the Developer a reimbursement agreement for City-approved costs associated with the Oversized Capacity Requirement, to be paid in cash when funds are available, as determined by the City Manager. The City may, in its discretion, enter into an agreement with the Developer to issue Fee Credits in-lieu of a reimbursement agreement for costs associated with the Oversized Capacity Requirement, or some combination thereof.

3.54.150 Procedure for issuance of credits or tender of reimbursement offer.

The City's extension of Fee Credits or tender of a reimbursement offer to a Developer pursuant to CVMC 3.54.140 and 3.54.145 shall be conditioned on the Developer complying with the following terms and conditions of this section:

- A. Developer shall comply with the procedures described in CVMC 2.56.160(H), except that City Council approval to proceed shall not be required for Developer constructed Transportation Facilities to be constructed for Fee Credit.
- B. The request for authorization shall contain the information listed in this section and such other information as may from time to time be requested by the City. In addition to the requirements identified in CVMC 2.56.160(H), Developer shall perform the following:
1. Developer shall prepare plans and specifications for approval by the City;
 2. Developer shall secure and dedicate any right-of-way required for the Transportation Facility;
 3. Developer shall secure all required permits and environmental clearances necessary for construction of the Transportation Facility;
 4. Developer shall provide a detailed cost estimate that itemizes those costs of the construction attributable to the Transportation Facility and excludes any work attributable to a specific subdivision project. The estimate shall be preliminary and the final amount of reimbursement or Fee Credit shall be subject to final determination by the City Manager or designee upon completion of the Transportation Facility;
 5. Developer shall provide performance bonds in a form and amount and with a surety satisfactory to the City (where the Developer intends to utilize provisions for immediate credit, the performance bond shall be for 100 percent of the estimated cost of the Transportation Facility, pursuant to subsection 4 above);
 6. Developer shall pay all City fees and costs;
 7. The City shall be held harmless and indemnified, and upon tender by the City, defended by the Developer for any of the costs and liabilities associated with the construction of the Transportation Facility;
 8. The City shall not be responsible for any of the costs of constructing the Transportation Facility. The Developer shall advance all necessary funds to construct the Transportation Facility;
 9. Developer shall be entitled to immediate Fee Credit equal to fifty (50) percent of the estimated cost of the Transportation Facility upon City acceptance of the estimate provided pursuant to subsection 4 above and the provision of performance bonds pursuant to subsection 5 above;
 10. Following receipt of valid bids for the Transportation Facility which comply with all applicable requirements, entering into binding contracts for the construction of the Transportation Facility, and meeting all requirements and conditions set forth above, as approved by the City Manager or designee, the Developer shall be entitled to additional

Fee Credits, increasing the cumulative immediate Fee Credit award to seventy-five (75) percent of the bid amount attributable to the Transportation Facility, thereby retaining twenty-five (25) percent of such Fee Credits until issuance by the City of a final expenditure determination;

11. If the Developer uses all of the immediate credit before final completion of the Transportation Facility project, then the developer may defer payment of development impact fees for other Building Permits by providing to the City liquid security such as cash or an irrevocable letter of credit, but not bonds or set-aside letters, in an amount equal to the remaining amount of the estimated cost of the Transportation Facility project;
12. When all Transportation Facility construction work has been completed to the satisfaction of the City Manager or designee, Developer shall submit to the City verification of payments made for the construction of the Transportation Facility. City Manager or designee shall make the final determination of which expenditures are eligible for Fee Credit or reimbursement. The Developer shall receive additional Fee Credit in an amount equal to the difference between the final expenditure determination and the seventy-five (75) percent immediate Fee Credit issued pursuant to subsection 10 above. If the amount of the final Fee Credit award is less than the deferred obligation pursuant to Subsection 11 above, then the Developer shall have thirty (30) calendar days to pay the deferred fee. If the deferred fees are not paid within this period, the City may make a demand against the liquid security and apply the proceeds to the fee obligation.

3.54.155 Developer transfer of credits.

A Developer who, in accordance with the provisions of CVMC 3.54.140, 3.54.145, and 3.54.150, receives Fee Credits against future payments of the Fee may transfer those Fee Credits as provided herein to another Developer (“Credit Transfer”). If the Developer complies with all conditions of this section, the City shall permit and execute the Credit Transfer. Fee Credits associated with facilities acquired or financed by assessment districts or special tax districts are not eligible for Credit Transfer beyond the boundaries of said district(s).

- A. The Developer shall provide the City with written request for Credit Transfer no later than three (3) business days prior to the desired effective date of the Credit Transfer. The request shall provide the following information:
 1. The name of the Developer receiving the Credit Transfer;
 2. The dollar value of the transferred Fee Credits; and
 3. The Fee against which the Fee Credits will be applied.
- B. Credit Transfers must abide by the limitations described in CVMC 3.54.140(C).

3.54.160 Procedure for fee modification or reduction.

- A. Any Developer who, because of the nature or type of uses proposed for a Development Project, contends that application of this Fee is unconstitutional or unrelated to mitigation of the

impacts of the Development may apply to the City Manager, in writing, for a modification or reduction of the Fee. The application shall state in detail the factual basis for the claim of modification or reduction. The City Manager shall issue a decision within ten (10) business days of receipt of the application for Fee modification or reduction. The decision of the City Manager may be appealed to the City Council. Unless the requirement for timely filing is waived by the City, the appeal shall be made in writing and filed with the City Clerk not later than ten (10) business days after issuance of the City Manager's decision. The appeal shall state in detail the factual basis for the claim of modification or reduction. The City Council shall consider the application at a public hearing on same, notice of which need not be published other than by description on the agenda of the meeting at which the public hearing is held. The City Council shall make reasonable efforts to hold the public hearing within sixty (60) days of the filing of the appeal. The decision of the City Council shall be final. If a reduction or modification is granted, any change in use within the Development Project shall subject the Developer to payment of the Fee for the new use. The procedure provided by this section is additional to any other procedure authorized by law for protesting or challenging the Fee imposed by this chapter.

- B. A Development Project which is designated and intended as a temporary use (10 years or less) and which is conducted in facilities which are, by their nature, short-term interim facilities such as a portable or modular building (including mobile homes, trailers, etc.) may qualify for a waiver or reduction, as determined by the City Manager or designee. The City Manager or designee's determination may be appealed to the City Council pursuant to subsection A above.
- C. A deferral of the Fee may be granted on the basis of Developer's demonstrated economic hardship as determined at the sole discretion of the City Manager or designee, on the condition that the amount deferred bears interest at a fair market rate so as to constitute an approximate value equivalent to a cash payment and that the amount deferred is adequately secured by agreement with the applicant, the terms of which shall be subject to approval of the City Attorney and the City Manager.
- D. A deferral of the Fee may be granted on the basis that the Development Project offers a significant public benefit as determined at the sole discretion of the City Manager or designee, on the condition that the amount deferred bears interest at a fair market rate so as to constitute an approximate value equivalent to a cash payment and that the amount deferred is adequately secured by agreement with the applicant, the terms of which shall be subject to approval of the City Attorney and the City Manager.
- E. At a minimum, deferral agreements pursuant to CVMC 3.54.160(C) and 3.54.160(D) shall require the following:
 - 1. The Fee obligation be secured through a promissory note and a recorded lien, deed of trust, or other security instrument acceptable to the City Manager or designee in real property of at least equivalent value to the Fees due pursuant to CVMC 3.54.090, to be located within the City of Chula Vista.
 - 2. The outstanding deferred balance shall become due and payable if the Developer transfers the Development Project property to any other party without the reasonable advance

approval of the City Manager or designee and the acceptance of the other party of the obligation to pay the outstanding balance of the deferred fees as provided herein, including, without limitation, the provision of appropriate security acceptable by the City Manager or designee.

F. Any Developer who proposes the construction of a new hotel/motel, which does not otherwise receive an economic subsidy from the City, may apply to the City for a deferral and/or reduction of the Fee based on the nature of hotel/motel.

1. A deferral pursuant to this section may be granted for a period of up to four (4) years from the Certificate of Occupancy for the Development Project. The deferral period shall begin upon the issuance of a temporary Certificate of Occupancy, as applicable. The total amount deferred shall be secured through an agreement between the City and the developer, the terms of which shall be subject to approval of the City Attorney and the City Manager. At a minimum, the agreement shall require the following:

- i. The Fee obligation be secured through a promissory note and a recorded lien, deed of trust, or other security instrument acceptable to the City Manager or designee in real property of at least equivalent value to the Fees due pursuant to CVMC 3.54.090, to be located within the City of Chula Vista.
- ii. Any sale or transfer of the hotel/motel property shall require the new owner to assume all obligations of the transferring party, including full responsibility for the outstanding deferred balance. The City of Chula Vista shall be provided with notice of the transfer and documentation satisfactory to the City Manager or designee demonstrating that the new owner has fully assumed all obligations of the transferring party. Failure to provide such notice and documentation shall cause the outstanding deferred balance to become due and payable.
- iii. The City's final determination of the Fees to be imposed on the hotel/motel will be based on a traffic study to be paid for by the developer and prepared and submitted for approval by the City's Director of Development Services within the fourth year of operation of the fully developed hotel/motel. The Fees shall be assessed based upon the rates in effect at the time of payment. Should the developer fail to submit such traffic study and obtain the City's approval thereof prior to the expiration of the deferral period, the entire Fee imposed pursuant to this chapter shall be immediately due and payable.

3.54.170 Assessment and special tax districts.

A. If any assessment or special tax district is established for any or all of the Transportation Facilities listed in Engineer's Reports, the Developer may apply to the City Council for a Fee Credit in an amount equal to the Development's attributable portion of the cost of the authorized improvements associated with the Transportation Facility as determined by the City

Manager or designee, plus approved incidental costs normally occurring with a construction project, but excluding costs associated with assessment district proceedings or financing.

- B. Whenever a Fee Credit is generated by constructing a Transportation Facility using assessment district or special tax district financing, the credit shall only be applied to the Fee obligations within that district.

3.54.180 Economic incentive credit.

The City Council may authorize the City to participate in the financing of Transportation Facilities at the time of the appropriation of funds by City Council for the construction of an eligible Transportation Facility; the City shall be eligible to receive a credit known hereafter as an “Economic Incentive Credit.” Such Economic Incentive Credit may be applied to Fee obligations for those Development Projects which the City Council determines, in its sole discretion, to be beneficial to the City. The use of the Economic Incentive Credit may be subject to conditions which shall be set forth in a written agreement between the Developer of the subject Development Project and the City and approved by City Council.

The City shall only receive Economic Incentive Credit for Transportation Facility funding provided in excess of the funding identified in the most recent Engineer’s Reports.

3.54.190 Fund loans.

- A. Loans by the City. The City may loan funds to the Transportation Development Impact Fee Fund to pay for Transportation Facilities should the Transportation Development Impact Fee Fund have insufficient funds to cover the cost of planned Transportation Facilities. Said loans, if granted, shall be approved by resolution of the City Council and shall carry interest rates pursuant to City Council Policy 220-06 (Interfund Loan Policy) or such other Council Policies as may be subsequently adopted.
- B. Developer Loans. A Developer may loan funds to the City as outlined in CVMC 3.54.140 and 3.54.150. The City may repay said developer loans with interest, under the terms listed in subsection (A) of this section.

3.54.200 Effective date.

This chapter shall become effective on October 25, 2018.

Section II. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section III. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section IV. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

Section V. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by:

Approved as to form by:

Kelly G. Broughton, FASLA
Director of Development Services

Glen R. Googins
City Attorney